

IN THE MATTER OF LICENSE NO 311 270 MERCHANT MARINER'S DOCUMENT NO.
Z-54 919 AND ALL OTHER SEAMAN DOCUMENTS

Issued to: Edwin King Carpenter

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1601

Edwin King Carpenter

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 21 March 1966, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for two months outright upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Assistant Engineer on board the United States SS AFRICAN LAKE under authority of the license above described, on or about 2 January 1966, Appellant failed to join his vessel upon its departure from Saigon, Vietnam.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigation Officer introduced in evidence the ship's Official Logbook.

In defense, Appellant offered in evidence his own testimony and documentary evidence consisting of two prescriptions for drugs, both dated 30 December 1965.

The Examiner rendered a written decision in which he concluded that the charge and specification had been proved by sufficient evidence. The entire decision was served on 25 March 1966. Appeal was timely filed.

FINDINGS OF FACT

On 2 January 1966, Appellant was serving as Second Assistant Engineer on board the United States AFRICAN LAKE and acting under authority of his license while the ship was in the port of Saigon, Vietnam. On this date, the Appellant went to the Captain and said, "Captain, I don't feel that I am qualified physically or mentally to go as Second Assistant. I don't think it would be fair to me and I don't think it would be fair to the ship, and the men on the ship and the ship itself".

This speech was the culmination of events which began when the

AFRICAN LAKE was diverted from inter-coastal voyages to Vietnam. When the Appellant was hired on the vessel, he believed he was to serve as Third Assistant Engineer but when he arrived on the vessel in Los Angeles, California, he was told that he had to serve as Second Assistant Engineer. (The Appellant has a license as Second Assistant Engineer, any horse power, steam and motor vessels.) The Appellant protested and an impasse developed which lasted for several days. One hour before the AFRICAN LAKE was to sail, the Appellant signed Shipping Articles to serve as Second Assistant Engineer.

When the vessel reached Saigon, Appellant requested permission to see a doctor. On the same day, sometime prior to 2 January 1966, he visited both the company doctor and a private doctor and was given prescriptions for medication by each.

On 2 January, the Appellant stated his feelings to the Captain as quoted above. The Appellant went ashore to think things over and returned to the dock at 1420; however, the ship had sailed at 1400. After taking prescribed medication for 4 or 5 days, the Appellant joined the United States SS MORMACDOVE as a day worker (on 7 January 1966), and returned to the United States.

The Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's decision failed to take into consideration that the Appellant was suffering from heat prostration, low blood pressure and loss of weight and had consulted 2 doctors on 30 December 1965. In addition, Appellant points out that he was never cross-examined nor was his testimony questioned at any time. Based on the above and lack of prior record, the Appellant contends that the Examiner's order was too harsh.

Opinion

Appellant concentrates his attack on the Examiner's interpretation of the events of 30 December 1965. He never explained what delayed his return to the dock on 2 January. Was it his illness? If that is so, then he would have been too ill to leave the vessel earlier on the same day. Since he was well enough to leave and return 20 minutes late, the excuse of illness can not be justified.

It is apparent from the record that the Appellant was unhappy in his situation. The prescribed medication indicates the Appellant's state of mind, a state of anxiety which required medical relief. This, however, does not meet the test required to show reasonable cause or justification for failing to join his ship especially after he gave all indications that he wanted to escape the burdens of his job. It was Appellant's responsibility to make every reasonable effort to reach the vessel before her departure, and he has not presented any evidence which explains his failure to return in time to depart with his vessel.

Pertaining to Appellant's contention that he was never cross-examined nor his testimony questioned, this is a matter entirely within the discretion of the opposing party. There is no requirement that every witness be cross-examined, only that the opportunity be present.

Accordingly, even consideration the mitigating circumstances and the fact that this was a first offense, I find the Examiner's order was not harsh or excessive.

ORDER

The order of the Examiner dated at San Francisco, California on 21 March 1966, is affirmed.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C. this 24th day of March 1967.

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